2025:HHC:10809

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Revision No. 531 of 2023
Reserved on: 25.3.2025
Date of Decision: 24.4.2025.

Gillu @ Gulab Chand ...Petitioner

Versus

Krishna Devi ...Respondent

Coram
Hon'ble Mr Justice Rakesh Kainthla, Judge.
Whether approved for reporting?[1] No.

For the Petitioner : Ms. Heena Chauhan, Advocate.
For the Respondent : Mr. Arun Kaushal, Advocate.

Rakesh Kainthla, Judge

The present revision is directed against the judgment dated 25.5.2023, passed by learned Sessions Judge, Kullu, District Kullu, H.P. (learned Appellate Court), vide which the judgment of conviction and order of sentence dated 9.9.2022, passed by learned Judicial Magistrate First Class, Manali, District Kullu, H.P. (learned Trial Court) was upheld and the appeal filed by the petitioner (accused before the learned Trial

[1] Whether reporters of Local Papers may be allowed to see the judgment? Yes.

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Court) was dismissed. *(Parties shall hereinafter be referred to in the same manner as they were arrayed before the learned Trial Court for convenience.)*

2. Briefly stated, the facts giving rise to the present revision are that the complainant filed a complaint before the learned Trial Court against the accused for the commission of an offence punishable under Section 138 of the Negotiable Instruments Act (NI Act). It was asserted that the parties were known to each other. The accused needed money, and he approached the complainant in June 2015. The accused agreed to sell his land measuring 0-01-61 hectares, being 161/2310 share comprised in Khasra No. 475, situated at Mohal Karasu, to the complainant for a total consideration of ₹8.00 lacs. An agreement to sell was executed between the parties. The accused received an amount of ₹1.00 lac in cash and ₹5.00 lac by way of cheque. It was agreed that the balance amount would be paid on or before 15.9.2015 at the time of execution of the sale deed, however, the accused failed to execute the sale deed in favour of the complainant. He extended the date of execution of the sale deed till 15.3.2016. The accused again failed to execute the sale deed on that day, and the time was extended till 31.10.2016 and

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thereafter till 17.12.2016. The accused received ₹60,000/- on 11.11.2016 from the complainant and agreed to execute the sale deed on 17.12.2016. The complainant visited the Tehsil office on 17.12.2016 for the registration of the sale deed, however, the accused did not visit the office. The complainant requested the accused to execute the sale deed or to return the money given to him as an advance. The accused issued a cheque of ₹6.00 lacs drawn on Kangra Central Cooperative Bank to discharge part of his liability. The complainant presented the cheque before his bank, however, the cheque was dishonoured with an endorsement 'funds insufficient' vide memo dated 17.11.2017. The complainant sent a registered notice to the accused asking him to pay the amount within 15 days from the date of receipt of the notice. This notice was duly served upon the accused, but the accused failed to pay the amount despite a valid notice of demand. Hence, the complaint was filed before the learned Trial Court for the commission of an offence punishable under Section 138 of the Negotiable Instruments Act (NI Act).

3. The learned Trial Court found sufficient reasons to summon the accused. When the accused appeared, notice of

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accusation was put to him, to which he pleaded not guilty and claimed to be tried.

4. The complainant examined herself (CW1) in support of her complaint. The accused, in his statement recorded under Section 313 of Cr.P.C., stated that he had taken a loan of ₹1.00 lac and handed over a blank cheque. He had returned ₹1.00 lac to the complainant. He examined Vinod Kumar (DW1).

5. Learned Trial Court held that issuance of the cheque was not in dispute. The accused failed to rebut the presumption of consideration attached to the cheque by leading any satisfactory evidence. The version of the complainant was duly proved by the Agreement to Sell executed between the parties. The cheque was dishonoured due to insufficient funds, and the accused failed to pay the amount despite receipt of a valid notice of demand. The defence witness only proved that the accused had withdrawn ₹1.00 lac from his account in 2013, whereas the present transaction relates to the year 2016. The withdrawal of the amount is not connected to the present transaction. Hence, the learned Trial Court convicted the accused for the commission of an offence punishable under Section 138 of the NI

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Act and sentenced him to undergo simple imprisonment for one year, pay compensation of ₹12.00 lacs, and in default of payment of compensation, to undergo simple imprisonment for one month.

6. Being aggrieved from the judgment passed by the learned Trial Court, the accused preferred an appeal which was decided by the learned Sessions Judge, Kullu. Learned Sessions Judge, Kullu, concurred with the findings recorded by the learned Trial Court that the accused had failed to rebut the presumption of consideration attached to the cheque. The version of the complainant was proved by the agreement to sell (Ex.CW1/F). The statement of Vinod Kumar (DW1) was not sufficient to rebut the presumption because the amount was withdrawn in the year 2013, whereas the present transaction relates to the year 2015. The complainant served a notice upon the accused, but he failed to pay the amount despite receipt of a valid notice of demand. Hence, the appeal was dismissed.

7. Being aggrieved from the judgments and order passed by learned Courts below, the accused has filed the present petition asserting that the learned Courts below did not

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properly appreciate the material placed before them. They misread the statements of witnesses. The statement of the defence witness was wrongly ignored. The accused had paid ₹2.00 lacs to the complainant on the date of the pronouncement of the judgment of conviction and the order of sentence. This fact was not noticed by learned Appellate Court. Therefore, it was prayed that the present revision be allowed and the judgment and order passed by the learned Courts below be set aside.

8. I have heard Ms. Heena Chauhan, learned counsel for the petitioner/accused, and Mr. Arun Kaushal, learned counsel for the respondent/complainant.

9. Ms. Heena Chauhan, learned counsel for the petitioner/accused, submitted that the learned Courts below erred in appreciating the evidence placed before them. The evidence led by the accused was probable, and the learned Courts below erred in discarding it. Therefore, she prayed that the present petition be allowed and the judgments and order passed by learned Courts below be set aside.

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10. Mr. Arun Kaushal, learned counsel for the respondent/complainant, submitted that the issuance of the cheque is not in dispute. Learned Courts below had rightly applied the presumption under Sections 139 and 118 of the NI Act. The accused failed to rebut the presumption by leading any satisfactory evidence. Therefore, it was prayed that the present petition be dismissed.

11. I have given considerable thought to the submissions made at the bar and have gone through the records carefully.

12. It was laid down by the Hon'ble Supreme Court in ***Malkeet Singh Gill v. State of Chhattisgarh*, *(2022) 8 SCC 204: (2022) 3 SCC (Cri) 348: 2022 SCC OnLine SC 786*** that the revisional court is not an appellate jurisdiction and it can only rectify the patent defect, errors of jurisdiction or the law. It was observed on page 207: -

> "**10.** Before adverting to the merits of the contentions, at the outset, it is apt to mention that there are concurrent findings of conviction arrived at by two courts after a detailed appreciation of the material and evidence brought on record. The High Court in criminal revision against conviction is not supposed to exercise the jurisdiction like the appellate court, and the scope of interference in revision is extremely narrow. Section 397 of the Criminal Procedure Code (in short "CrPC") vests

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jurisdiction to satisfy itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior court. The object of the provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well-founded error which is to be determined on the merits of individual cases. It is also well settled that while considering the same, the Revisional Court does not dwell at length upon the facts and evidence of the case to reverse those findings.

13. This position was reiterated in ***State of Gujarat v. Dilipsinh Kishorsinh Rao, 2023 SCC OnLine SC 1294,*** wherein it was observed:

> "**13.** The power and jurisdiction of the Higher Court under Section 397 Cr. P.C., which vests the court with the power to call for and examine records of an inferior court, is for the purposes of satisfying itself as to the legality and regularity of any proceeding or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law or the perversity which has crept into such proceedings. It would be apposite to refer to the judgment of this court in ***Amit Kapoor v. Ramesh Chandra, (2012) 9 SCC 460,*** where the scope of Section 397 has been considered and succinctly explained as under:
>
> > "12. Section 397 of the Code vests the court with the power to call for and examine the records of an inferior court for the purposes of satisfying itself as to the legality and regularity of any proceedings or order made in a case. The object of this provision is to set right a patent defect or an error of jurisdiction or law. There has to be a well-founded error, and it may not be appropriate for the court to scrutinise the orders, which, upon the face of it, bear a token of careful consideration and appear to be in accordance

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> with the law. If one looks into the various judgments of this Court, it emerges that the revisional jurisdiction can be invoked where the decisions under challenge are grossly erroneous, there is no compliance with the provisions of law, the finding recorded is based on no evidence, material evidence is ignored or judicial discretion is exercised arbitrarily or perversely. These are not exhaustive classes but are merely indicative. Each case would have to be determined on its own merits.
>
> 13. Another well-accepted norm is that the revisional jurisdiction of the higher court is a very limited one and cannot be exercised in a routine manner. One of the inbuilt restrictions is that it should not be against an interim or interlocutory order. The Court has to keep in mind that the exercise of revisional jurisdiction itself should not lead to injustice ex facie. Where the Court is dealing with the question as to whether the charge has been framed properly and in accordance with law in a given case, it may be reluctant to interfere in the exercise of its revisional jurisdiction unless the case substantially falls within the categories aforestated. Even framing of charge is a much-advanced stage in the proceedings under the CrPC."

14. The present revision has to be decided as per the parameters laid down by the Hon'ble Supreme Court.

15. The accused did not dispute in his statement recorded under Section 313 of Cr.P.C. that he had issued the cheque in favour of the complainant. He stated in reply to question No. 4 that he had taken an amount of ₹1.00 lac and had issued a blank cheque to the complainant. This clearly shows the

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admission made by the accused regarding the issuance of the cheque. It was laid down by this Court in ***Naresh Verma vs. Narinder Chauhan 2020(1) Shim. L.C. 398*** that where the accused had not disputed his signatures on the cheque, the Court has to presume that it was issued in discharge of legal liability and the burden would shift upon the accused to rebut the presumption. It was observed: -

> "8. Once signatures on the cheque are not disputed, the plea with regard to the cheque having not been issued towards discharge of lawful liability, rightly came to be rejected by learned Courts below. Reliance is placed upon ***Hiten P. Dalal v. Bartender Nath Bannerji, 2001 (6) SCC 16***, wherein it has been held as under:
>
> > "The words 'unless the contrary is proved' which occur in this provision make it clear that the presumption has to be rebutted by 'proof' and not by a bare explanation which is merely plausible. A fact is said to be proved when its existence is directly established or when, upon the material before it, the Court finds its existence to be so probable that a reasonable man would act on the supposition that it exists. Unless, therefore, the explanation is supported by proof, the presumption created by the provision cannot be said to be rebutted....."
>
> 9. S.139 of the Act provides that it shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of nature referred to in section 138 for the discharge, in whole or in part, of any debt or other liability.

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16. Similar is the judgment in ***Basalingappa vs. Mudibasappa 2019 (5) SCC 418*** wherein it was held:

> "26. Applying the proposition of law as noted above, in the facts of the present case, it is clear that the signature on the cheque, having been admitted, a presumption shall be raised under Section 139 that the cheque was issued in discharge of debt or liability."

17. This position was reiterated in ***Kalamani Tex v. P. Balasubramanian, (2021) 5 SCC 283: (2021) 3 SCC (Civ) 25: (2021) 2 SCC (Cri) 555: 2021 SCC OnLine SC 75*** wherein it was held at page 289:

> "14. Once the 2nd appellant had admitted his signatures on the cheque and the deed, the trial court ought to have presumed that the cheque was issued as consideration for a legally enforceable debt. The trial court fell in error when it called upon the respondent complainant to explain the circumstances under which the appellants were liable to pay. Such an approach of the trial court was directly in the teeth of the established legal position as discussed above, and amounts to a patent error of law."

18. Similar is the judgment in ***APS Forex Services (P) Ltd. v. Shakti International Fashion Linkers (2020) 12 SCC 724***, wherein it was observed: -

> **7.2.** What is emerging from the material on record is that the issuance of a cheque by the accused and the signature of the accused on the said cheque are not disputed by the accused. The accused has also not disputed that there were transactions between the parties. Even as per the statement of the accused, which was recorded at the time

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of the framing of the charge, he has admitted that some amount was due and payable. However, it was the case on behalf of the accused that the cheque was given by way of security, and the same has been misused by the complainant. However, nothing is on record that in the reply to the statutory notice, it was the case on behalf of the accused that the cheque was given by way of security. Be that as it may, however, it is required to be noted that earlier the accused issued cheques which came to be dishonoured on the ground of "insufficient funds" and thereafter a fresh consolidated cheque of ₹9,55,574 was given which has been returned unpaid on the ground of "STOP PAYMENT". Therefore, the cheque in question was issued for the second time. Therefore, once the accused has admitted the issuance of a cheque which bears his signature, there is a presumption that there exists a legally enforceable debt or liability under Section 139 of the NI Act. However, such a presumption is rebuttable in nature, and the accused is required to lead evidence to rebut such presumption. The accused was required to lead evidence that the entire amount due and payable to the complainant was paid.

9. Coming back to the facts in the present case and considering the fact that the accused has admitted the issuance of the cheques and his signature on the cheque and that the cheque in question was issued for the second time after the earlier cheques were dishonoured and that even according to the accused some amount was due and payable, there is a presumption under Section 139 of the NI Act that there exists a legally enforceable debt or liability. Of course, such presumption is rebuttable in nature. However, to rebut the presumption, the accused was required to lead evidence that the full amount due and payable to the complainant had been paid. In the present case, no such evidence has been led by the accused. The story put forward by the accused that the cheques were given by way of security is not believable in the absence of further evidence to rebut the presumption,

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> and more particularly, the cheque in question was issued for the second time after the earlier cheques were dishonoured. Therefore, both the courts below have materially erred in not properly appreciating and considering the presumption in favour of the complainant that there exists a legally enforceable debt or liability as per Section 139 of the NI Act. It appears that both the learned trial court as well as the High Court have committed an error in shifting the burden upon the complainant to prove the debt or liability, without appreciating the presumption under Section 139 of the NI Act. As observed above, Section 139 of the Act is an example of reverse onus clause and therefore, once the issuance of the cheque has been admitted and even the signature on the cheque has been admitted, there is always a presumption in favour of the complainant that there exists legally enforceable debt or liability and thereafter, it is for the accused to rebut such presumption by leading evidence.

19. The presumption under Section 139 of the NI Act was explained by the Hon'ble Supreme Court in ***Triyambak S. Hegde v. Sripad, (2022) 1 SCC 742: (2022) 1 SCC (Civ) 512: 2021 SCC OnLine SC 788*** as under at page 747:

> "**12.** From the facts arising in this case and the nature of the rival contentions, the record would disclose that the signature on the documents at Exts. P-6 and P-2 are not disputed. Ext. P-2 is the dishonoured cheque based on which the complaint was filed. From the evidence tendered before the JMFC, it is clear that the respondent has not disputed the signature on the cheque. If that be the position, as noted by the courts below, a presumption would arise under Section 139 in favour of the appellant who was the holder of the cheque. Section 139 of the NI Act reads as hereunder:

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> "**139.** ***Presumption in favour of the holder***. —It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in Section 138 for the discharge, in whole or in part, of any debt or other liability."

13. Insofar as the payment of the amount by the appellant in the context of the cheque having been signed by the respondent, the presumption for passing of the consideration would arise as provided under Section 118(*a*) of the NI Act, which reads as hereunder:

> "**118.** ***Presumptions as to negotiable instruments***. — Until the contrary is proved, the following presumptions shall be made:
>
> (*a*) *of consideration*: that every negotiable instrument was made or drawn for consideration, and that every such instrument, when it has been accepted, indorsed, negotiated or transferred, was accepted, indorsed, negotiated or transferred for consideration."

14. The above-noted provisions are explicit to the effect that such presumption would remain until the contrary is proved. The learned counsel for the appellant in that regard has relied on the decision of this Court in ***K. Bhaskaran v. Sankaran Vaidhyan Balan [K. Bhaskaran v. Sankaran Vaidhyan Balan, (1999) 7 SCC 510: 1999 SCC (Cri) 1284]*** wherein it is held as hereunder: (SCC pp. 516-17, para 9)

> "*9*. As the signature in the cheque is admitted to be that of the accused, the presumption envisaged in Section 118 of the Act can legally be inferred that the cheque was made or drawn for consideration on the date which the cheque bears. Section 139 of the Act enjoins the Court to presume that the holder of the cheque received it for the discharge of any debt or liability. The burden was on the accused to rebut the aforesaid presumption. The trial court was not persuaded to rely on the interested testimony of

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> DW 1 to rebut the presumption. The said finding was upheld [***Sankaran Vaidhyan Balan v. K. Bhaskaran, Criminal Appeal No. 234 of 1995, order dated 23-10-1998 (Ker)***] by the High Court. It is not now open to the accused to contend differently on that aspect."

15. The learned counsel for the respondent has however referred to the decision of this Court in ***Basalingappa v. Mudibasappa [Basalingappa v. Mudibasappa, (2019) 5 SCC 418: (2019) 2 SCC (Cri) 571***] wherein it is held as hereunder: (SCC pp. 432-33, paras 25-26)

> "25. We having noticed the ratio laid down by this Court in the above cases on Sections 118(*a*) and 139, we now summarise the principles enumerated by this Court in the following manner:
>
> 25.1. Once the execution of the cheque is admitted, Section 139 of the Act mandates a presumption that the cheque was for the discharge of any debt or other liability.
>
> 25.2. The presumption under Section 139 is a rebuttable presumption, and the onus is on the accused to raise the probable defence. The standard of proof for rebutting the presumption is that of preponderance of probabilities.
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> 25.3. To rebut the presumption, it is open for the accused to rely on evidence led by him or the accused can also rely on the materials submitted by the complainant in order to raise a probable defence. Inference of preponderance of probabilities can be drawn not only from the materials brought on record by the parties but also by reference to the circumstances upon which they rely.
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> 25.4. That it is not necessary for the accused to come into the witness box in support of his defence, Section 139 imposed an evidentiary burden and not a persuasive burden.

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25.5. It is not necessary for the accused to come into the witness box to support his defence.

26. Applying the preposition of law as noted above, in the facts of the present case, it is clear that the signature on the cheque, having been admitted, a presumption shall be raised under Section 139 that the cheque was issued in discharge of debt or liability. The question to be looked into is as to whether any probable defence was raised by the accused. In the cross-examination of PW 1, when the specific question was put that a cheque was issued in relation to a loan of Rs 25,000 taken by the accused, PW 1 said that he does not remember. PW 1 in his evidence admitted that he retired in 1997, on which date he received a monetary benefit of Rs 8 lakhs, which was encashed by the complainant. It was also brought in evidence that in the year 2010, the complainant entered into a sale agreement for which he paid an amount of Rs 4,50,000 to Balana Gouda towards sale consideration. Payment of Rs 4,50,000 being admitted in the year 2010 and further payment of loan of Rs 50,000 with regard to which Complaint No. 119 of 2012 was filed by the complainant, a copy of which complaint was also filed as Ext. D-2, there was a burden on the complainant to prove his financial capacity. In the years 2010-2011, as per own case of the complainant, he made a payment of Rs 18 lakhs. During his cross-examination, when the financial capacity to pay Rs 6 lakhs to the accused was questioned, there was no satisfactory reply given by the complainant. The evidence on record, thus, is a probable defence on behalf of the accused, which shifted the burden on the complainant to prove his financial capacity and other facts."

16. In that light, it is contended that the very materials produced by the appellant and the answers relating to

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lack of knowledge of property details by PW 1 in his cross-examination would indicate that the transaction is doubtful, and no evidence is tendered to indicate that the amount was paid. In such an event, it was not necessary for the respondent to tender rebuttal evidence, but the case put forth would be sufficient to indicate that the respondent has successfully rebutted the presumption.

17. On the position of law, the provisions referred to in Sections 118 and 139 of the NI Act, as also the enunciation of law as made by this Court, need no reiteration as there is no ambiguity whatsoever. In ***Basalingappav. Mudibasappa [Basalingappa v. Mudibasappa, (2019) 5 SCC 418 : (2019) 2 SCC (Cri) 571***] relied on by the learned counsel for the respondent, though on facts the ultimate conclusion therein was against raising presumption, the facts and circumstances are entirely different as the transaction between the parties as claimed in the said case is peculiar to the facts of that case where the consideration claimed to have been paid did not find favour with the Court keeping in view the various transactions and extent of amount involved. However, the legal position relating to the presumption arising under Sections 118 and 139 of the NI Act on signature being admitted has been reiterated. Hence, whether there is a rebuttal or not would depend on the facts and circumstances of each case."

20. This position was reiterated in ***Tedhi Singh v. Narayan Dass Mahant, (2022) 6 SCC 735: (2022) 2 SCC (Cri) 726: (2022) 3 SCC (Civ) 442: 2022 SCC OnLine SC 302,*** wherein it was held at page 739:

"8. It is true that this is a case under Section 138 of the Negotiable Instruments Act. Section 139 of the NI Act provides that the court shall presume that the holder of a cheque received the cheque of the nature referred to in

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Section 138 for the discharge, in whole or in part, of any debt or other liability. This presumption, however, is expressly made subject to the position being proved to the contrary. In other words, it is open to the accused to establish that there is no consideration received. It is in the context of this provision that the theory of "probable defence" has grown. In an earlier judgment, in fact, which has also been adverted to in ***Basalingappa [Basalingappa v. Mudibasappa, (2019) 5 SCC 418: (2019) 2 SCC (Cri) 571]***, this Court notes that Section 139 of the NI Act is an example of reverse onus (see ***Rangappa v. Sri Mohan [Rangappa v. Sri Mohan, (2010) 11 SCC 441: (2010) 4 SCC (Civ) 477: (2011) 1 SCC (Cri) 184]***). It is also true that this Court has found that the accused is not expected to discharge an unduly high standard of proof. It is accordingly that the principle has developed that all which the accused needs to establish is a probable defence. As to whether a probable defence has been established is a matter to be decided on the facts of each case on the conspectus of evidence and circumstances that exist..."

21. Similar is the judgment in ***P. Rasiya v. Abdul Nazer, 2022 SCC OnLine SC 1131,*** wherein it was observed:

"As per Section 139 of the N.I. Act, it shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in Section 138 for discharge, in whole or in part, of any debt or other liability. Therefore, once the initial burden is discharged by the Complainant that the cheque was issued by the accused and the signature and the issuance of the cheque are not disputed by the accused, in that case, the onus will shift upon the accused to prove the contrary that the cheque was not for any debt or other liability. The presumption under Section 139 of the N.I. Act is a statutory presumption and thereafter, once it is presumed that the cheque is issued in whole or in part of

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> any debt or other liability which is in favour of the Complainant/holder of the cheque, in that case, it is for the accused to prove the contrary."

22. This position was reiterated in ***Rajesh Jain v. Ajay Singh, (2023) 10 SCC 148: 2023 SCC OnLine SC 1275,*** wherein it was observed at page 161:

> **33.** The NI Act provides for two presumptions: Section 118 and Section 139. Section 118 of the Act inter alia directs that it shall be presumed until the contrary is proved that every negotiable instrument was made or drawn for consideration. Section 139 of the Act stipulates that "unless the contrary is proved, it shall be presumed that the holder of the cheque received the cheque for the discharge of, whole or part of any debt or liability". It will be seen that the "*presumed fact*" directly relates to one of the crucial ingredients necessary to sustain a conviction under Section 138. [The rules discussed hereinbelow are common to both the presumptions under Section 139 and Section 118 and are hence not repeated—reference to one can be taken as reference to another]
>
> **34.** Section 139 of the NI Act, which takes the form of a "*shall presume*" clause, is illustrative of a presumption of law. Because Section 139 requires that the Court "*shall presume*" the fact stated therein, it is obligatory for the Court to raise this presumption in every case where the factual basis for the raising of the presumption had been established. But this does not preclude the person against whom the presumption is drawn from rebutting it and proving the contrary, as is clear from the use of the phrase "*unless the contrary is proved"*.
>
> **35.** The Court will necessarily presume that the cheque had been issued towards the discharge of a legally enforceable debt/liability in two circumstances. *Firstly*, when the drawer of the cheque admits issuance/execution of the cheque and *secondly*, in the event where the

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complainant proves that the cheque was issued/executed in his favour by the drawer. The circumstances set out above form the fact(s) which bring about the activation of the presumptive clause. [***Bharat Barrel & Drum Mfg. Co.*** **v.** ***Amin Chand Payrelal*** [***Bharat Barrel & Drum Mfg. Co. v. Amin Chand Payrelal, (1999) 3 SCC 35***]]

36. Recently, this Court has gone to the extent of holding that presumption takes effect even in a situation where the accused contends that a blank cheque leaf was voluntarily signed and handed over by him to the complainant. [***Bir Singh v. Mukesh Kumar [Bir Singh v. Mukesh Kumar, (2019) 4 SCC 197: (2019) 2 SCC (Civ) 309: (2019) 2 SCC (Cri) 40]***]. Therefore, the mere admission of the drawer's signature, without admitting the execution of the entire contents in the cheque, is now sufficient to trigger the presumption.

37. As soon as the complainant discharges the burden to prove that the instrument, say a cheque, was issued by the accused for discharge of debt, the presumptive device under Section 139 of the Act helps shifting the burden on the accused. The effect of the presumption, in that sense, is to transfer the evidential burden on the accused of proving that the cheque was not received by the Bank towards the discharge of any liability. Until this evidential burden is discharged by the accused, the presumed fact will have to be taken to be true, without expecting the complainant to do anything further.

38. ***John Henry Wigmore [John Henry Wigmore and the Rules of Evidence: The Hidden Origins of Modern Law]*** *on Evidence* states as follows:

> "The peculiar effect of the presumption of law is merely to invoke a rule of law compelling the Jury to reach the conclusion in the absence of evidence to the contrary from the opponent but if the opponent does offer evidence to the contrary (sufficient to satisfy the Judge's requirement of some evidence), the presumption 'disappears as a

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> rule of law and the case is in the Jury's hands free from any rule'."
>
> **39.** The standard of proof to discharge this evidential burden is not as heavy as that usually seen in situations where the prosecution is required to prove the guilt of an accused. The accused is not expected to prove the non-existence of the presumed fact beyond a reasonable doubt. The accused must meet the standard of "*preponderance of probabilities*", similar to a defendant in a civil proceeding. [***Rangappa v. Sri Mohan [Rangappa v. Sri Mohan, (2010) 11 SCC 441: (2010) 4 SCC (Civ) 477: (2011) 1 SCC (Cri) 184: AIR 2010 SC 1898]***]

23. The version of the complainant is duly corroborated by the Agreement to Sell (Ex.CW1/F) in which it was mentioned that the accused had agreed to sell the land for ₹8.00 lacs, out of which the complainant had paid ₹6.00 lacs and the remaining amount of ₹2.00 lacs would be paid at the time of execution of the sale deed.

24. The accused examined Vinod Kumar (DW1), who stated that the accused had withdrawn ₹1.00 lac on 15.5.2013. In the present case, the cheque was issued on 21.8.2017. The Agreement to Sell was executed on 15.6.2015. Therefore, the amount withdrawn by the accused in 2013 will not show that it was towards the repayment of the loan stated to have been taken by him. Vinod Kumar (DW1) stated that he was not aware of the purpose of withdrawing the money. The accused did not step

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into the witness box to state that he had taken an amount of ₹1.00 lac from the accused, which was returned by him after withdrawing it from his account. He relied upon his statement recorded under Section 313 of Cr.P.C. to establish this fact. It was held in ***Sumeti Vij v. Paramount Tech Fab Industries, (2022) 15 SCC 689: 2021 SCC OnLine SC 201*** that the accused has to lead defence evidence to rebut the presumption and mere denial in his statement under Section 313 is not sufficient to rebut the presumption. It was observed at page 700:

> "20. That apart, when the complainant exhibited all these documents in support of his complaints and recorded the statement of three witnesses in support thereof, the appellant has recorded her statement under Section 313 of the Code but failed to record evidence to disprove or rebut the presumption in support of her defence available under Section 139 of the Act. *The statement of the accused recorded under Section 313 of the Code is not substantive evidence of defence, but only an opportunity for the accused to explain the incriminating circumstances appearing in the prosecution's case against the accused. Therefore, there is no evidence to rebut the presumption that the cheques were issued for consideration*." (Emphasis supplied)"

25. Therefore, learned Courts below had rightly held that the statement of Vinod Kumar (DW1) was not sufficient to rebut the presumption of consideration attached to the cheque.

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26. It was submitted that the accused had issued a blank cheque as a security, which was misused by the complainant, as is evident from the fact that there is a difference in the handwriting of the cheque. This submission is not acceptable. No witness was examined to prove that the handwriting on the cheque is different. The cheque was not sent to the handwriting expert to analyze the handwriting and compare it with the signatures. Therefore, the plea that the blank cheque was given is not acceptable.

27. The agreement to sell shows that the amount of ₹6.00 lacs was paid by the complainant to the accused as an advance. Thus, the accused had a liability to return ₹6.00 lacs when he had failed to execute the sale deed under the agreement to sell executed by him. It was laid down by this Court in ***Hamid Mohammad Versus Jaimal Dass 2016 (1) HLJ 456,*** that even if the cheque was issued towards the security, the accused will be liable. It was observed:

> "9. Submission of learned Advocate appearing on behalf of the revisionist that the cheque in question was issued to the complainant as security and on this ground, criminal revision petition be accepted is rejected being devoid of any force for the reasons hereinafter mentioned. As per Section 138 of the Negotiable Instruments Act 1881,

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> if any cheque is issued on account of other liability, then the provisions of Section 138 of the Negotiable Instruments Act 1881 would be attracted. The court has perused the original cheque, Ext. C-1 dated 30.10.2008 placed on record. There is no recital in the cheque Ext. C-1, that cheque was issued as a security cheque. It is well-settled law that a cheque issued as security would also come under the provision of Section 138 of the Negotiable Instruments Act 1881. See ***2016 (3) SCC page 1 titled Don Ayengia v. State of Assam & another***. It is well-settled law that where there is a conflict between former law and subsequent law, then subsequent law always prevails."

28. It was laid down by the Hon'ble Supreme Court in ***Sampelly Satyanarayana Rao v. Indian Renewable Energy Development Agency Ltd., (2016) 10 SCC 458: (2017) 1 SCC (Cri) 149 : (2017) 1 SCC (Civ) 126: 2016 SCC OnLine SC 954*** that issuing a cheque toward security will also attract the liability for the commission of an offence punishable under Section 138 of N.I. Act. It was observed: -

> "**9.** We have given due consideration to the submission advanced on behalf of the appellant as well as the observations of this Court in ***Indus Airways [Indus Airways (P) Ltd. v. Magnum Aviation (P) Ltd., (2014) 12 SCC 539: (2014) 5 SCC (Civ) 138: (2014) 6 SCC (Cri) 845]*** with reference to the explanation to Section 138 of the Act and the expression "for discharge of any debt or other liability" occurring in Section 138 of the Act. We are of the view that the question whether a post-dated cheque is for "discharge of debt or liability" depends on the nature of the transaction. If on the date of the cheque, liability or debt exists or the amount has become legally recoverable, the section is attracted and not otherwise.

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10. Reference to the facts of the present case clearly shows that though the word "security" is used in Clause 3.1(*iii*) of the agreement, the said expression refers to the cheques being towards repayment of instalments. The repayment becomes due under the agreement, the moment the loan is advanced and the instalment falls due. It is undisputed that the loan was duly disbursed on 28-2-2002 which was prior to the date of the cheques. Once the loan was disbursed and instalments have fallen due on the date of the cheque as per the agreement, dishonour of such cheques would fall under Section 138 of the Act. The cheques undoubtedly represent the outstanding liability.

11. The judgment in ***Indus Airways [Indus Airways (P) Ltd. v. Magnum Aviation (P) Ltd., (2014) 12 SCC 539: (2014) 5 SCC (Civ) 138 : (2014) 6 SCC (Cri) 845]*** is clearly distinguishable. As already noted, it was held therein that liability arising out of a claim for breach of contract under Section 138, which arises on account of dishonour of cheque issued was not by itself on a par with criminal liability towards discharge of acknowledged and admitted debt under a loan transaction. Dishonour of a cheque issued for discharge of later liability is clearly covered by the statute in question. Admittedly, on the date of the cheque there was a debt/liability in praesenti in terms of the loan agreement, as against ***Indus Airways [Indus Airways (P) Ltd. v. Magnum Aviation (P) Ltd., (2014) 12 SCC 539: (2014) 5 SCC (Civ) 138 : (2014) 6 SCC (Cri) 845]*** where the purchase order had been cancelled and cheque issued towards advance payment for the purchase order was dishonoured. In that case, it was found that the cheque had not been issued for discharge of liability but as advance for the purchase order which was cancelled. Keeping in mind this fine but real distinction, the said judgment cannot be applied to a case of the present nature where the cheque was for repayment of loan instalment which had fallen due though such deposit of cheques towards repayment of instalments was also described as "security" in the loan agreement. In applying the judgment in ***Indus Airways [Indus Airways (P)***

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> *Ltd. v. Magnum Aviation (P) Ltd., (2014) 12 SCC 539 : (2014) 5 SCC (Civ) 138 : (2014) 6 SCC (Cri) 845]*, one cannot lose sight of the difference between a transaction of purchase order which is cancelled and that of a loan transaction where loan has actually been advanced and its repayment is due on the date of the cheque.
>
> **12.** The crucial question to determine the applicability of Section 138 of the Act is whether the cheque represents the discharge of existing enforceable debt or liability or whether it represents an advance payment without there being subsisting debt or liability. While approving the views of the different High Courts noted earlier, this is the underlying principle as can be discerned from discussion of the said cases in the judgment of this Court."

29. This position was reiterated in ***Sripati Singh v. State of Jharkhand, 2021 SCC OnLine SC 1002: AIR 2021 SC 5732***, and it was held that a cheque issued as security is not waste paper and a complaint under section 138 of the N.I. Act can be filed on its dishonour. It was observed:

> "17. A cheque issued as security pursuant to a financial transaction cannot be considered as a worthless piece of paper under every circumstance. 'Security' in its true sense is the state of being safe and the security given for a loan is something given as a pledge of payment. It is given, deposited or pledged to make certain the fulfilment of an obligation to which the parties to the transaction are bound. If in a transaction, a loan is advanced and the borrower agrees to repay the amount in a specified time-frame and issues a cheque as security to secure such repayment; if the loan amount is not repaid in any other form before the due date or if there is no other understanding or agreement between the parties to defer the payment of the amount, the cheque which is issued as security would mature for presentation and the drawee of

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the cheque would be entitled to present the same. On such presentation, if the same is dishonoured, the consequences contemplated under Section 138 and the other provisions of N.I. Act would flow.

18. When a cheque is issued and is treated as 'security' towards repayment of an amount with a time period being stipulated for repayment, all that it ensures is that such cheque which is issued as 'security cannot be presented prior to the loan or the instalment maturing for repayment towards which such cheque is issued as security. Further, the borrower would have the option of repaying the loan amount or such financial liability in any other form and in that manner, if the amount of loan due and payable has been discharged within the agreed period, the cheque issued as security cannot thereafter be presented. Therefore, the prior discharge of the loan or there being an altered situation due to which there would be an understanding between the parties is a sine qua non to not present the cheque which was issued as security. These are only the defences that would be available to the drawer of the cheque in proceedings initiated under Section 138 of the N.I. Act. Therefore, there cannot be a hard and fast rule that a cheque, which is issued as security can never be presented by the drawee of the cheque. If such is the understanding a cheque would also be reduced to an 'on-demand promissory note' and in all circumstances, it would only be civil litigation to recover the amount, which is not the intention of the statute. When a cheque is issued even though as 'security' the consequence flowing therefrom is also known to the drawer of the cheque and in the circumstance stated above if the cheque is presented and dishonoured, the holder of the cheque/drawee would have the option of initiating the civil proceedings for recovery or the criminal proceedings for punishment in the fact situation, but in any event, it is not for the drawer of the cheque to dictate terms with regard to the nature of litigation."

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30. It was submitted that there is a difference in the handwriting of the cheque, which shows that the cheque was filled out by someone other person. This submission will not help the accused. It was laid down by the Hon'ble Supreme Court in ***Bir Singh v. Mukesh Kumar, (2019) 4 SCC 197: (2019) 2 SCC (Cri) 40 : (2019) 2 SCC (Civ) 309: 2019 SCC OnLine SC 138***, that a person is liable for the commission of an offence punishable under Section 138 of NI Act even if the cheque is filled by some other person. It was observed:

> "**33.** A meaningful reading of the provisions of the Negotiable Instruments Act including, in particular, Sections 20, 87 and 139, makes it amply clear that a person who signs a cheque and makes it over to the payee remains liable unless he adduces evidence to rebut the presumption that the cheque had been issued for payment of a debt or in discharge of a liability. It is immaterial that the cheque may have been filled in by any person other than the drawer if the cheque is duly signed by the drawer. If the cheque is otherwise valid, the penal provisions of Section 138 would be attracted.
>
> **34.** If a signed blank cheque is voluntarily presented to a payee, towards some payment, the payee may fill up the amount and other particulars. This in itself would not invalidate the cheque. The onus would still be on the accused to prove that the cheque was not in discharge of a debt or liability by adducing evidence.
>
> **35.** It is not the case that the respondent accused him of either signing the cheque or parted with it under any threat or coercion. Nor is it the case that the respondent accused that the unfilled signed cheque had been stolen.

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> The existence of a fiduciary relationship between the payee of a cheque and its drawer would not disentitle the payee to the benefit of the presumption under Section 139 of the Negotiable Instruments Act, in the absence of evidence of exercise of undue influence or coercion. The second question is also answered in the negative.
>
> **36.** Even a blank cheque leaf, voluntarily signed and handed over by the accused, which is towards some payment, would attract presumption under Section 139 of the Negotiable Instruments Act, in the absence of any cogent evidence to show that the cheque was not issued in discharge of a debt."

31. This position was reiterated in ***Oriental Bank of Commerce v. Prabodh Kumar Tewari, 2022 SCC OnLine SC 1089,*** wherein it was observed:

> "12. The submission, which has been urged on behalf of the appellant, is that even assuming, as the first respondent submits, that the details in the cheque were not filled in by the drawer, this would not make any difference to the liability of the drawer.
>
> xxxxxx
>
> 16. A drawer who signs a cheque and hands it over to the payee is presumed to be liable unless the drawer adduces evidence to rebut the presumption that the cheque has been issued towards payment of a debt or in the discharge of a liability. The presumption arises under Section 139"

32. The complainant stated that the cheque was dishonoured with an endorsement 'insufficient funds'. She has proved the memo (Ex.CW1/C), which shows that the cheque was dishonoured with an endorsement 'funds insufficient'. There is a presumption attached to the memo of dishonour under Section

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146 of the NI Act. The accused did not lead any evidence to rebut the presumption, and the learned Courts below had rightly held that the cheque was dishonoured due to insufficient funds.

33. The complainant asserted that she had issued a notice (Ex.CW1/D) to the accused asking him to pay the amount within 15 days from the date of receipt of the notice. She has also produced a receipt (Ex.CW1/E) to show that the notice was delivered to the Post Office. The address mentioned in the notice is the same address which was mentioned by the accused in the notice of accusation and the statement recorded under Section 313 of Cr.P.C. Hence, it was sent to the correct address. There is a presumption under Section 27 of the General Clauses Act that a letter sent to the correct address is deemed to be delivered to the addressee. The accused denied in his statement recorded under Section 313 of Cr.P.C. that notice was delivered to him, however, he did not lead any evidence to rebut the presumption. Therefore, learned Courts below had rightly held that the notice was deemed to have been served upon the accused.

34. In any case, it was laid down in ***C.C. Allavi Haji vs. Pala Pelly Mohd. 2007(6) SCC 555*** that the person who claims that he

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had not received the notice has to pay the amount within 15 days from the date of the receipt of the summons from the Court and in case of failure to do so, he cannot take the advantage of the fact that notice was not received by him. It was observed:

> "It is also to be borne in mind that the requirement of giving of notice is a clear departure from the rule of Criminal Law, where there is no stipulation of giving of notice before filing a complaint. *Any drawer who claims that he did not receive the notice sent by post, can, within 15 days of receipt of summons from the court in respect of the complaint under Section 138 of the Act, make payment of the cheque amount and submit to the Court that he had made payment within 15 days of receipt of summons (by receiving a copy of the complaint with the summons) and, therefore, the complaint is liable to be rejected. A person who does not pay within 15 days of receipt of the summons from the Court along with the copy of the complaint under Section 138 of the Act, cannot obviously contend that there was no proper service of notice as required under Section 138, by ignoring statutory presumption to the contrary under Section 27 of the G.C. Act and Section 114 of the Evidence Act*. In our view, any other interpretation of the proviso would defeat the very object of the legislation. As observed in ***Bhaskaran's case*** (supra), if the giving of notice in the context of Clause (b) of the proviso was the same as the receipt of notice a trickster cheque drawer would get the premium to avoid receiving the notice by adopting different strategies and escape from legal consequences of Section 138 of the Act." (Emphasis supplied)

35. In the present case, the accused did not pay the cheque amount after the receipt of notice from the Court. Hence, his plea that no notice was served upon him will not help him.

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36. Thus, the learned Courts below had rightly held that the accused had issued the cheque in discharge of his legal liability, which cheque was dishonoured with an endorsement 'insufficient funds' and the accused failed to pay the amount despite deemed receipt of a valid notice of demand. Hence, the learned Trial Court had rightly convicted the accused of the commission of an offence punishable under Section 138 of the NI Act, and the learned Appellate Court had rightly upheld the conviction of the accused.

37. Learned Trial Court sentenced the accused to undergo simple imprisonment for one year and pay a compensation of ₹12.00 lacs. It was laid down by the Hon'ble Supreme Court in ***Bir Singh v. Mukesh Kumar, (2019) 4 SCC 197: (2019) 2 SCC (Cri) 40: (2019) 2 SCC (Civ) 309: 2019 SCC OnLine SC 138*** that the penal provision of Section 138 is deterrent in nature. It was observed at page 203:

> "6. The object of Section 138 of the Negotiable Instruments Act is to infuse credibility into negotiable instruments, including cheques, and to encourage and promote the use of negotiable instruments, including cheques, in financial transactions. The penal provision of Section 138 of the Negotiable Instruments Act is intended to be a deterrent to callous issuance of negotiable instruments such as cheques without serious intention to

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honour the promise implicit in the issuance of the same."

38. Thus, the sentence of imprisonment for one year is not excessive.

39. The cheque was issued on 21.8.2017, and the learned Trial Court imposed the sentence on 9.9.2022 after the lapse of more than five years. The complainant had to incur expenses on the litigation, and he also lost interest on the amount advanced by him. It was laid down by the Hon'ble Supreme Court in ***M/S Kalamani Tex and another Versus P. Balasubramanian JT 2021(2) SC 519*** that the Courts should uniformly levy a fine up to twice the cheque amount along with simple interest at the rate of 9% per annum. It was observed:-

> "20. As regards the claim of compensation raised on behalf of the respondent, we are conscious of the settled principles that the object of Chapter XVII of the NIA is not only punitive but also compensatory and restitutive. The provisions of NIA envision a single window for criminal liability for the dishonour of a cheque as well as civil liability for the realisation of the cheque amount. It is also well settled that there needs to be a consistent approach towards awarding compensation, and unless there exist special circumstances, the Courts should uniformly levy a fine up to twice the cheque amount along with simple interest at the rate of 9% per annum. *[**R. Vijian v. Baby, (2012) 1 SCC 260**, 20]*"

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40. In the present case the interest on ₹ 6,00,000/- for five years @ 9% per annum would be ₹2,70,000/-. Learned Trial Court had imposed double the amount of the cheque, which is not justified. Therefore, the amount of ₹6.00 lacs ordered to be paid is reduced to ₹3.00 lacs and the amount of compensation is reduced to ₹9.00 lacs to ₹12.00 lacs awarded by the learned Trial Court.

41. It was submitted that the learned Trial Court erred in imposing the sentence of imprisonment in case of default in the payment of compensation. This submission cannot be accepted. It was laid down by the Hon'ble Supreme Court in ***K.A. Abbas v. Sabu Joseph, (2010) 6 SCC 230: (2010) 3 SCC (Civ) 744: (2010) 3 SCC (Cri) 127: 2010 SCC OnLine SC 612,*** the Courts can impose a sentence of imprisonment in default of payment of compensation. It was observed at page 237:

> "**20.** Moving over to the question, whether a default sentence can be imposed on default of payment of compensation, this Court in ***Hari Singh v. Sukhbir Singh [(1988) 4 SCC 551: 1988 SCC (Cri) 984: AIR 1988 SC 2127] and in Balraj v. State of U.P. [(1994) 4 SCC 29: 1994 SCC (Cri) 823: AIR 1995 SC 1935]***, has held that it was open to all the courts in India to impose a sentence on default of payment of compensation under sub-section (3) of Section 357. In ***Hari Singh v. Sukhbir Singh [(1988) 4 SCC 551: 1988 SCC (Cri) 984: AIR 1988 SC 2127]***, this Court has

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noticed certain factors which are required to be taken into consideration while passing an order under the section: (SCC p. 558, para 11)

> "*11.* The payment by way of compensation must, however, be reasonable. What is reasonable may depend upon the facts and circumstances of each case. The quantum of compensation may be determined by taking into account the nature of the crime, the justness of the claim by the victim and the ability of the accused to pay. If there is more than one accused, they may be asked to pay on equal terms unless their capacity to pay varies considerably. The payment may also vary depending on the acts of each accused. A reasonable period for payment of compensation, if necessary, by instalments, may also be given. The court may enforce the order by imposing a sentence in default."

21. This position also finds support in ***R. v. Oliver John Huish [(1985) 7 Cri App R (S) 272]***. The Lord Justice Croom Johnson, speaking for the Bench, has observed:

> "When compensation orders may be made, the most careful examination is required. Documents should be obtained, and evidence, either on affidavit or orally, should be given. The proceedings should, if necessary, be adjourned to arrive at the true state of the defendant's affairs.
>
> Very often, a compensation order is made and a very light sentence of imprisonment is imposed, because the court recognizes that if the defendant is to have an opportunity of paying the compensation, he must be enabled to earn the money with which to do so. The result is therefore an extremely light sentence of imprisonment. If the compensation order turns out to be virtually worthless, the defendant has got off with a very light sentence of imprisonment as well as no order

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of compensation. In other words, generally speaking, he has got off with everything."

22. The law laid down in ***Hari Singh v. Sukhbir Singh [(1988) 4 SCC 551: 1988 SCC (Cri) 984: AIR 1988 SC 2127]*** was reiterated by this Court in ***Suganthi Suresh Kumar v. Jagdeeshan [(2002) 2 SCC 420: 2002 SCC (Cri) 344]***. The Court observed: (SCC pp. 424-25, paras 5 & 10)

"*5.* In the said decision, this Court reminded all concerned that it is well to remember the emphasis laid on the need for making liberal use of Section 357(3) of the Code. This was observed by reference to a decision of this Court in ***Hari Singh v. Sukhbir Singh [(1988) 4 SCC 551: 1988 SCC (Cri) 984: AIR 1988 SC 2127]***. In the said decision, this Court held as follows: (SCC p. 558, para 11)

'*11.* ... The quantum of compensation may be determined by taking into account the nature of the crime, the justness of the claim by the victim and the ability of the accused to pay. If there is more than one accused, they may be asked to pay on equal terms unless their capacity to pay varies considerably. The payment may also vary depending on the acts of each accused. A reasonable period for payment of compensation, if necessary, by instalments, may also be given. *The court may enforce the order by imposing a sentence in default*.'

(emphasis in original)

***

10. That apart, Section 431 of the Code has only prescribed that any money (other than fine) payable by virtue of an order made under the Code shall be recoverable 'as if it were a fine'. Two modes of recovery of the fine have been indicated in Section 421(1) of the Code. The proviso to the sub-section says that if the sentence directs that in default of payment of the fine, the offender shall be imprisoned, and if such offender has undergone the

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whole of such imprisonment in default, no court shall issue such warrant for the levy of the amount."

The Court further held: (***Jagdeeshan case [(2002) 2 SCC 420: 2002 SCC (Cri) 344]***, SCC p. 425, para 11)

"*11.* When this Court pronounced in ***Hari Singh v. Sukhbir Singh [(1988) 4 SCC 551: 1988 SCC (Cri) 984: AIR 1988 SC 2127]*** that a court may enforce an order to pay compensation 'by imposing a sentence in default' it is open to all courts in India to follow the said course. The said legal position would continue to hold good until it is overruled by a larger Bench of this Court. Hence learned Single Judge of the High Court of Kerala has committed an impropriety by expressing that the said legal direction of this Court should not be followed by the subordinate courts in Kerala. We express our disapproval of the course adopted by the said Judge in ***Rajendran v. Jose [(2001) 3 KLT 431]***. It is unfortunate that when the Sessions Judge has correctly done a course in accordance with the discipline, the Single Judge of the High Court has incorrectly reversed it."

23. In order to set at rest the divergent opinion expressed in ***Ahammedkutty case [(2009) 6 SCC 660 : (2009) 3 SCC (Cri) 302]***, this Court in ***Vijayan v. Sadanandan K. [(2009) 6 SCC 652 : (2009) 3 SCC (Cri) 296]***, after noticing the provision of Sections 421 and 431 CrPC, which dealt with mode of recovery of fine and Section 64 IPC, which empowered the courts to provide for a sentence of imprisonment on default of payment of fine, the Court stated: (***Vijayan case [(2009) 6 SCC 652 : (2009) 3 SCC (Cri) 296***], SCC p. 658, para 24)

"24. We have carefully considered the submissions made on behalf of the respective parties. Since a decision on the question raised in this petition is still in a nebulous state, there appear to be two

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views as to whether a default sentence of imprisonment can be imposed in cases where compensation is awarded to the complainant under Section 357(3) CrPC. As pointed out by Mr Basant in ***Dilip S. Dahanukar case [(2007) 6 SCC 528 : (2007) 3 SCC (Cri) 209]***, the distinction between a fine and compensation as understood under Section 357(1)(*b*) and Section 357(3) CrPC had been explained, but the question as to whether a default sentence clause could be made in respect of compensation payable under Section 357(3) CrPC, which is central to the decision in this case, had not been considered."

The Court further held: (***Vijayan case [(2009) 6 SCC 652: (2009) 3 SCC (Cri) 296]***, SCC p. 659, paras 31-32)

"*31.* The provisions of Sections 357(3) and 431 CrPC, when read with Section 64 IPC, empower the court, while making an order for payment of compensation, to also include a default sentence in case of non-payment of the same.

32. The observations made by this Court in ***Hari Singh case [(1988) 4 SCC 551: 1988 SCC (Cri) 984: AIR 1988 SC 2127]*** are as important today as they were when they were made and if, as submitted by Dr. Pillay, recourse can only be had to Section 421 CrPC for enforcing the same, the very object of sub-section (3) of Section 357 would be frustrated and the relief contemplated therein would be rendered somewhat illusory."

24. In ***Shantilal v. State of M.P. [(2007) 11 SCC 243 : (2008) 1 SCC (Cri) 1]***, it is stated that the sentence of imprisonment for default in payment of a fine or compensation is different from a normal sentence of imprisonment. The Court also delved into the factors to be taken into consideration while passing an order under Section 357(3) CrPC. This Court stated: (SCC pp. 255-56, para 31)

"*31.* ... The term of imprisonment in default of payment of a fine is not a sentence. It is a penalty

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which a person incurs on account of non-payment of a fine. The sentence is something which an offender must undergo unless it is set aside or remitted in part or in whole, either in appeal or in revision or other appropriate judicial proceedings, or 'otherwise'. A term of imprisonment ordered in default of payment of a fine stands on a different footing. A person is required to undergo imprisonment either because he is unable to pay the amount of fine or refuse to pay such amount. He, therefore, can always avoid to undergo imprisonment in default of payment of the fine by paying such amount. It is, therefore, not only the *power* but the *duty* of the court to keep in view the nature of the offence, circumstances under which it was committed, the position of the offender and other relevant considerations before ordering the offender to suffer imprisonment in default of payment of a fine."

(emphasis in original)

25. In ***Kuldip Kaur v. Surinder Singh [(1989) 1 SCC 405: 1989 SCC (Cri) 171: AIR 1989 SC 232],*** in the context of Section 125 CrPC observed that sentencing a person to jail is sometimes a mode of enforcement. In this regard, the Court stated: (SCC p. 409, para 6)

"*6*. A distinction has to be drawn between a mode of enforcing recovery on the one hand and effecting actual recovery of the amount of monthly allowance which has fallen in arrears on the other. Sentencing a person to jail is a '*mode of enforcement*'. It is not a '*mode of satisfaction*' of the liability. The liability can be satisfied only by making actual payment of the arrears. The whole purpose of sending to jail is to oblige a person liable to pay the monthly allowance who refuses to comply with the order without sufficient cause, to obey the order and to make the payment. The purpose of sending him to jail is not to wipe out the

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> liability which he has refused to discharge. It should also be realised that a person ordered to pay a monthly allowance can be sent to jail only if he fails to pay the monthly allowance 'without sufficient cause' to comply with the order. It would indeed be strange to hold that a person who, without reasonable cause, refuses to comply with the order of the court to maintain his neglected wife or child would be absolved of his liability merely because he prefers to go to jail. A sentence of jail is no substitute for the recovery of the amount of monthly allowance which has fallen in arrears."

26. From the above line of cases, it becomes very clear that a sentence of imprisonment can be granted for default in payment of compensation awarded under Section 357(3) CrPC. The whole purpose of the provision is to accommodate the interests of the victims in the criminal justice system. Sometimes the situation becomes such that there is no purpose served by keeping a person behind bars. Instead, directing the accused to pay an amount of compensation to the victim or affected party can ensure the delivery of total justice. Therefore, this grant of compensation is sometimes in lieu of sending a person behind bars or in addition to a very light sentence of imprisonment. Hence, in default of payment of this compensation, there must be a just recourse. Not imposing a sentence of imprisonment would mean allowing the accused to get away without paying the compensation, and imposing another fine would be impractical, as it would mean imposing a fine upon another fine and therefore would not ensure proper enforcement of the order of compensation. While passing an order under Section 357(3), it is imperative for the courts to look at the ability and the capacity of the accused to pay the same amount as has been laid down by the cases above, otherwise, the very purpose of granting an order of compensation would stand defeated.

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42. This position was reiterated in ***R. Mohan v. A.K. Vijaya Kumar, (2012) 8 SCC 721: (2012) 4 SCC (Civ) 585: (2012) 3 SCC (Cri) 1013: 2012 SCC OnLine SC 486*** wherein it was observed at page 729:

> **29.** The idea behind directing the accused to pay compensation to the complainant is to give him immediate relief so as to alleviate his grievance. In terms of Section 357(3), compensation is awarded for the loss or injury suffered by the person due to the act of the accused for which he is sentenced. If merely an order directing compensation is passed, it would be totally ineffective. It could be an order without any deterrence or apprehension of immediate adverse consequences in case of its non-observance. The whole purpose of giving relief to the complainant under Section 357(3) of the Code would be frustrated if he is driven to take recourse to Section 421 of the Code. An order under Section 357(3) must have the potential to secure its observance. Deterrence can only be infused into the order by providing for a default sentence. If Section 421 of the Code puts compensation ordered to be paid by the court on a par with the fine so far as the mode of recovery is concerned, then there is no reason why the court cannot impose a sentence in default of payment of compensation as it can be done in case of default in payment of fine under Section 64 IPC. It is obvious that in view of this, in ***Vijayan [(2009) 6 SCC 652: (2009) 3 SCC (Cri) 296]***, this Court stated that the abovementioned provisions enabled the court to impose a sentence in default of payment of compensation and rejected the submission that the recourse can only be had to Section 421 of the Code for enforcing the order of compensation. Pertinently, it was made clear that observations made by this Court in ***Hari Singh [(1988) 4 SCC 551: 1988 SCC (Cri) 984]*** are as important today as they were when they were made. The conclusion, therefore, is

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that the order to pay compensation may be enforced by awarding a sentence in default.

30. In view of the above, we find no illegality in the order passed by the learned Magistrate and confirmed by the Sessions Court in awarding a sentence in default of payment of compensation. The High Court was in error in setting aside the sentence imposed in default of payment of compensation.

43. Thus, there is no infirmity in the order passed by the learned Trial Court imposing a sentence of imprisonment in case of default in the payment of compensation.

44. No other point was urged.

45. In view of the above, the present revision is partly allowed and the judgment passed by the learned Trial Court is partly modified. The compensation amount of ₹12.00 lacs awarded by the learned Trial Court, as affirmed by the learned Appellate Court, is ordered to be reduced to ₹9.00 lacs, subject to this modification, the rest of the judgment is upheld.

46. Records of the learned Courts below be sent back forthwith.

(Rakesh Kainthla)
Judge

24th April, 2025
(Chander)

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